

highways extending in an east-west direction and interstate highways extending generally in a north-south direction. Applicant has outlined the advantages of this process in the specification and applicant contends that there is no disclosure of a process disclosing the provision of an intercontinental power grid distribution system wherein energy products supply lines are placed below the ground surface of the median or right-of-way of interstate highways.

By providing an energy grid supply system which tracks the Interstate Highway system, access to these supply lines from energy sources such as ethanol produced in the Midwest, and gas from gas from Wyoming will be available. Currently, ethanol is transported by barge or truck and there are no accessible pipelines available for the natural gas in Wyoming.

Claims 1 and 2 were rejected under 35 USC 102(b) as anticipated by, or in the alternative, under 35 USC 103(a) as obvious over the Colonial Pipeline Company website pages entitled "Terminalling Services", "About Us" and "System Map". In this rejection, it was contended that "it would inherent that should the pipeline system need to pass or parallel an interstate highway that proper permission is acquired". Finally, the Examiner contends that "it would have been obvious to one of ordinary skill in the art to place a pipeline under the median of a highway since doing so would facilitate laying out of the pipeline from a 'point a' to 'a point b' for example.

Further, "The Association of Oil Pipelines" website document and the document entitled "Williams Petroleum Products Pipeline Project" were both deemed to read on claims 1 & 2. Applicant respectfully traverses the position of the Examiner in the rejection of claims 1 & 2 based on the disclosures of the Colonial Pipeline Company

documents, the Association of Oil Pipeline document and the Williams Petroleum Products Pipeline Project document.

Applicant contends that none of the references to Colonial Pipeline Company, the Association of Oil Pipelines, and the Williams Petroleum Products Pipeline Project disclose the process defined in the claims. Claim 1 specifies that energy products supply lines are positioned below the surface of ground of the median and right-of-ways of an interstate highway. The description of the process embodied in the specification explicitly refers to interstate highways. Fig. 1 of the drawings depicts the location of these interstate highways.

A petroleum supply line passing through several states (an interstate pipeline) is decidedly different than the process involving the positioning of energy supply lines below the ground surface of medians or rights-of-ways of interstate highways. Right-of-way as used in the application is the conventional meaning of this expression, namely, the strip of land immediately adjacent the interstate highway. The term "right-of-way" is defined in The American Heritage Dictionary, Second College Edition as : 2. "The strip of land over which facilities such as highways, railroads, or power lines are built."

In the rejection, it was contended that "it would be inherent that should the pipeline system need to pass or parallel an interstate highway system that 'proper permission' is acquired".

While the meaning of this statement rejecting the claims is not clearly understood, the term "parallel" as used therein is assumed to mean parallel to an interstate highway but not necessarily along the right-of-way. If this is indeed the meaning intended, then the conclusionary effect of the statement does not meet the terms

of the claim. The location of the supply line as required in the claims is along the median or along the interstate highway right-of-way. Locating a pipeline parallel to an interstate highway does not necessarily place the pipeline in the right-of-way of the interstate highway.

The process defined in the claims can not be construed such that the energy supply line "pass" an interstate highway. Applicant's process does not pass an interstate highway. The Colonial Pipeline Company document does not disclose a petroleum pipeline which is positioned in the median or right-of-way of an interstate highway. As a matter of fact, the pipeline system disclosed in the Colonial Pipeline Company document is not positioned along the median or right-of-way of any thoroughfare.

However, it is contended that it would be inherent to pass or parallel an interstate highway under 35 USC 102 in the rejection of the claims. Inherency as used in an anticipation rejection under 35 USC 102 requires the missing claim element to be common knowledge of technologists (one of ordinary skill in the art) or technological facts known to those in the field of the invention Continental Can Company USA, Inc. v Monsanto Co. 948 F 2d 1264, 20 USPQ 2d 1746 (Fed. Cir. 1991).

The Colonial Pipeline Company documents do not disclose sufficient information about technological facts known to those of ordinary skill in the field of pipeline locations. The "System Map" does not depict the pipeline as located along the median or right-of-way of any highway or thoroughfare. However, the practice of those of ordinary skill in the art of selecting routes for energy supply lines, especially petroleum, is disclosed in the Association of Oil Pipe Lines document and the Williams Petroleum Products Pipeline Project documents. For example, in the Williams Petroleum document,

the location of a typical petroleum supply line discloses that in addition to Federal lands, the rights-of-way will be located across private lands, state lands and acquired lands. Only terminals are located near interstate highways.

Similarly, the Association of Oil Pipe Lines document discloses that the easement corridor, the pipeline right-of-way includes private and public lands. The inherency or common knowledge of technologists in the field of energy supply lines is to locate such supply lines on Federal, state, private and acquired lands. In terms of inherency, there is nothing in the prior art which would explicitly or implicitly suggest that technologist would follow the process defined in the claims.

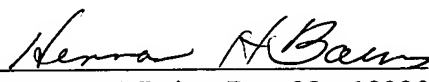
In the rejection of the claims, it was further proposed that it would have been obvious to one of ordinary in the art (35 USC 103) to place a pipeline under the median of a highway, since doing so would facilitate laying out of pipeline from a "point a" to a "point b" for example. "A person of ordinary skill in the art is 'one who thinks along the line of conventional wisdom in the art and is not one who undertakes to innovate ...'" Standard Oil Co. v American Cyanamid Co., 774 F. 2d 448, 227 USPQ 293 (Fed. Cir. 1985). One of ordinary skill in the art when following conventional wisdom in laying out a pipeline from a "point a" to a "point b" would not place the pipeline in the median of an interstate highway but would traverse Federal, state, private and acquired lands and would avoid interstate highways. The conventional wisdom of those of ordinary skill in the art of laying petroleum pipelines is expressly contained in the contents of the "Williams Petroleum" document and "Association of Oil Pipe Lines" documents. By way of inference, the "Colonial Pipeline Company" document supports this contention.

Since there is no suggestion of the steps expressed in claim 1 & 2 in the prior art documents (Colonial Pipeline, AOPL and Williams Petroleum) applicant respectfully contends that claims 1 & 2 are clearly allowable of the prior art references.

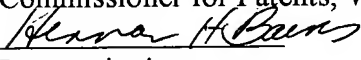
Applicant has enclosed herewith a map schematic as Exhibit A to show how the north-south and east-west locations of energy supply lines would efficiently transport energy products throughout continental USA.

In view of these remarks, applicant respectfully requests an early notice of allowance.

Respectfully submitted,

By 
Herman H. Bains, Reg. No, 19330
6101 Tracy Avenue
Minneapolis, Minnesota 55436
Phone: 952-929-9362 Fax: 952-929-9362

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Box NON-FEE AMENDMENT, Assist. Commissioner for Patents, Washington, D.C. 20231 on April 29, 2003.


Person signing: